

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SAMUEL L. ROBERTS,

Plaintiff,

-VS-

LOS ALAMOS NATIONAL SECURITY, LLC,
AWE, PLC, and
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Defendants.

**ANSWER TO THIRD-
PARTY COMPLAINT WITH
COUNTERCLAIMS**

Civil Case No.: 11-cv-6206(L)

LOS ALAMOS NATIONAL SECURITY, LLC,

Third-Party Plaintiff,

-VS-

UNIVERSITY OF ROCHESTER,

Third-Party Defendant.

Third-Party Defendant, University of Rochester (the “University” or “Third-Party Defendant”), by its attorneys, Ward Greenberg Heller & Reidy, LLP, hereby answers the Third-Party Complaint of Third-Party Plaintiff Los Alamos National Security, LLC (“Los Alamos” or “Third-Party Plaintiff”), without waiving, and expressly reserving, all rights that it may have to seek relief by appropriate motions. The University answers the Third-Party Complaint as follows:

1. Paragraph 1 of the Third-Party Complaint is a summary paragraph to which no answer is required. To the extent an answer is required, the University denies the allegations except admits that Plaintiff has asserted a claim against the Third-Party Plaintiff arising from an incident at the Laboratory for Laser Energetics on August 6, 2008.

2. Admits the allegations in paragraphs 2, 3, 4, 5, 6, 8, 12, 17 and 18 of the Third-Party Complaint.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Third-Party complaint, except denies that it is liable in any manner in this action.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 9, 10, 11, 15 and 16 of the Third-Party Complaint.

5. Denies the allegations in paragraph 14 of the Third-Party Complaint, except denies knowledge or information sufficient to form a belief as to whether the Plaintiff sustained a grave injury, and admits that plaintiff was involved in an accident in the Target Bay at the Laboratory for Laser Energetics on August 6, 2008 and that the University installed, operated and maintained the "Light Pipe."

6. Denies the allegations in paragraph 19 of the Third Party Complaint except admits that it installed, operated and maintained the "Light Pipe" and that Los Alamos was not involved in the maintenance, assembly or manufacture of the "Light Pipe" or the adjustment or alteration of the "Light Pipe" in the Target Bay.

7. Denies the allegations in paragraphs 7, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the Third-Party Complaint.

8. In response to the allegations in paragraphs 13 and 23 of the Third-Party Complaint, the University repeats and realleges its responses as set forth paragraphs 1–7 above.

9. Denies each and every allegation in the Third-Party Complaint not specifically addressed above.

FIRST AFFIRMATIVE DEFENSE

10. The University hereby adopts as its own each and every affirmative defense set forth in Defendant/Third-Party Plaintiff Los Alamos' Answer to Plaintiff's Amended Complaint.

SECOND AFFIRMATIVE DEFENSE

11. The Third-Party Complaint fails to state a claim upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

12. Upon information and belief, the injuries and damages alleged in the Complaint and Third-Party Complaint were caused by the culpable conduct of persons over whom the University has no control, and the University is entitled to apportionment as against those entities if the plaintiff or Third-Party Plaintiff recovers.

FOURTH AFFIRMATIVE DEFENSE

13. Pursuant to CPLR Article 16, the liability of the University for non-economic loss shall not exceed its equitable share as determined by the Court or jury after assessing the relative culpability of each person/party causing or contributing to the total liability for non-economic loss.

FIRST COUNTERCLAIM (Contribution)

14. If the University is held liable to the Third-Party Plaintiff, such liability arose from the negligent or careless acts of the Third-Party Plaintiff, and the University is entitled to contribution from the Third-Party Plaintiff for the amount of any verdict or judgment that may be recovered.

SECOND COUNTERCLAIM (Indemnification)

15. The University is entitled to indemnification, either contractual or common law, from the Third-Party Plaintiff.

WHEREFORE, the University demands judgment dismissing the Third-Party Complaint, or in the alternative, demands that the percentage of liability attributable to all parties be determined, and that any judgment against the University be reduced by the proportionate share of culpability attributable to plaintiff or the Third-Party Plaintiff, together with the costs and disbursements of this action.

Dated: October 27, 2011

Respectfully submitted,

UNIVERSITY OF ROCHESTER

By its attorneys,

/s/ Eric J. Ward

Eric J. Ward

Attorneys for Third-Party Defendant,

University of Rochester

Ward Greenberg Heller & Reidy LLP

300 State Street

Rochester, New York 14614

Tel.: (585) 454-0714

Fax: (585) 231-1921

eward@wardgreenberg.com

TO: Beryl Nusbaum, Esq.
Greta K. Kolcon, Esq.
Attorneys for Third-Party Plaintiff,
Los Alamos National Security, LLC
Woods Oviatt Gilman LLP
700 Crossroads Building
Two State Street
Rochester, New York 14614
Tel: (585) 987-2800
bnusbaum@woodsobviatt.com
gkolcon@woodsobviatt.com

cc: Louis J. Micca, Esq.
Attorneys for Plaintiff
Samuel L. Roberts
11 State Street
Pittsford, New York 14534
Tel: (585) 899-6031
Fax: (585) 383-6357
lmicca@msn.com

David Rothenberg, Esq.
Attorneys for Defendant Massachusetts
Institute of Technology
Geiger and Rothenberg, LLP
45 Exchange Street
Suite 800
Rochester, New York 14614
Tel: (585) 232-1946
drothenberg@geigroth.com

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2011, I electronically filed the foregoing Answer to the Third-Party Complaint with Counterclaims with the Clerk of the District Court using the CM/ECF system, which sent notice to:

- 1) Attorneys for Third-Party Plaintiff: Beryl Nusbaum, Esq., Greta K. Kolcon, Esq. (bnusbaum@woodsobviatt.com; gkolcon@woodsoviatt.com;
- 2) Attorney for Plaintiff: Louis J. Micca, Esq. (lmicca@msn.com); and
- 3) Attorney for Defendant Massachusetts Institute of Technology: David Rothenberg, Esq. (drothenberg@geigroth.com).

Dated: October 27, 2011

/s/ Eric J. Ward
Eric J. Ward
Attorneys for Third-Party Defendant,
University of Rochester
Ward Greenberg Heller & Reidy LLP
300 State Street
Rochester, New York 14614
Tel.: (585) 454-0714
Fax: (585) 231-1921
eward@wardgreenberg.com